

105TH CONGRESS
1ST SESSION

S. 39

To amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mr. STEVENS (for himself, Mr. BREAUX, Mr. THURMOND, and Mr. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “International Dolphin Conservation Program Act”.

6 (b) REFERENCES TO MARINE MAMMAL PROTECTION
7 ACT.—Except as otherwise expressly provided, whenever
8 in this Act an amendment or repeal is expressed in terms

1 of an amendment to, or repeal of, a section or other provi-
2 sion, the reference shall be considered to be made to a
3 section or other provision of the Marine Mammal Protec-
4 tion Act of 1972 (16 U.S.C. 1361 et seq.).

5 **SEC. 2. PURPOSE AND FINDINGS.**

6 (a) PURPOSES.—The purposes of this Act are—

7 (1) to give effect to the Declaration of Panama,
8 signed October 4, 1995, by the Governments of
9 Belize, Colombia, Costa Rica, Ecuador, France,
10 Honduras, Mexico, Panama, Spain, the United
11 States of America, Vanuatu, and Venezuela, includ-
12 ing the establishment of the International Dolphin
13 Conservation Program, relating to the protection of
14 dolphins and other species, and the conservation and
15 management of tuna in the eastern tropical Pacific
16 Ocean;

17 (2) to recognize that nations fishing for tuna in
18 the eastern tropical Pacific Ocean have achieved sig-
19 nificant reductions in dolphin mortality associated
20 with that fishery; and

21 (3) to eliminate the ban on imports of tuna
22 from those nations that are in compliance with the
23 International Dolphin Conservation Program.

24 (b) FINDINGS.—The Congress finds that—

1 (1) the nations that fish for tuna in the eastern
2 tropical Pacific Ocean have achieved significant re-
3 ductions in dolphin mortality associated with the
4 purse seine fishery from hundreds of thousands an-
5 nually to fewer than 5,000 annually;

6 (2) the provisions of the Marine Mammal Pro-
7 tection Act of 1972 that impose a ban on imports
8 from nations that fish for tuna in the eastern tropi-
9 cal Pacific Ocean have served as an incentive to re-
10 duce dolphin mortalities;

11 (3) tuna canners and processors of the United
12 States have led the canning and processing industry
13 in promoting a dolphin-safe tuna market; and

14 (4) 12 signatory nations to the Declaration of
15 Panama, including the United States, agreed under
16 that Declaration to require that the total annual dol-
17 phin mortality in the purse seine fishery for yellow-
18 fin tuna in the eastern tropical Pacific Ocean not ex-
19 ceed 5,000 animals, with a commitment and objec-
20 tive to progressively reduce dolphin mortality to a
21 level approaching zero through the setting of annual
22 limits with the goal of eliminating dolphin mortality.

23 **SEC. 3. DEFINITIONS.**

24 Section 3 (16 U.S.C. 1362) is amended by adding
25 at the end the following new paragraphs:

1 “(28) The term ‘International Dolphin Con-
2 servation Program’ means the international program
3 established by the agreement signed in LaJolla,
4 California, in June, 1992, as formalized, modified,
5 and enhanced in accordance with the Declaration of
6 Panama, that requires—

7 “(A) that the total annual dolphin mortal-
8 ity in the purse seine fishery for yellow fin tuna
9 in the eastern tropical Pacific Ocean shall not
10 exceed 5,000 animals with a commitment and
11 objective to progressively reduce dolphin mortal-
12 ity to a level approaching zero through the set-
13 ting of annual limits;

14 “(B) the establishment of a per stock per
15 year dolphin mortality limit at a level between
16 0.2 percent and 0.1 percent of the minimum
17 population estimate to be in effect through cal-
18 endar year 2000;

19 “(C) the establishment of a per stock per
20 year dolphin mortality limit at a level less than
21 or equal to 0.1 percent of the minimum popu-
22 lation estimate beginning with the calendar year
23 2001;

24 “(D) that if a dolphin mortality limit is ex-
25 ceeded under—

1 “(i) subparagraph (A), all sets on dol-
 2 phins shall cease for the applicable fishing
 3 year; and

4 “(ii) subparagraph (B) or (C), all sets
 5 on the stocks covered under subparagraph
 6 (B) or (C) and any mixed schools that con-
 7 tain any of those stocks shall cease for the
 8 applicable fishing year;

9 “(E) a scientific review and assessment to
 10 be conducted in calendar year 1998 to—

11 “(i) assess progress in meeting the ob-
 12 jectives set for calendar year 2000 under
 13 subparagraph (B); and

14 “(ii) as appropriate, consider rec-
 15 ommendations for meeting these objectives;

16 “(F) a scientific review and assessment to
 17 be conducted in calendar year 2000—

18 “(i) to review the stocks covered
 19 under subparagraph (C); and

20 “(ii) as appropriate to consider rec-
 21 ommendations to further the objectives set
 22 under that subparagraph;

23 “(G) the establishment of a per vessel
 24 maximum annual dolphin mortality limit con-
 25 sistent with the established per-year mortality

1 limits, as determined under subparagraphs (A)
 2 through (C); and

3 “(H) the provision of a system of incen-
 4 tives to vessel captains to continue to reduce
 5 dolphin mortality, with the goal of eliminating
 6 dolphin mortality.

7 “(29) The term ‘Declaration of Panama’ means
 8 the declaration signed in Panama City, Republic of
 9 Panama, on October 4, 1995.”.

10 **SEC. 4. AMENDMENTS TO TITLE I.**

11 (a) Section 101(a)(2) (16 U.S.C. 1371(a)(2)) is
 12 amended—

13 (1) by inserting after the first sentence “Such
 14 authorizations may be granted under title III with
 15 respect to purse seine fishing for yellowfin tuna in
 16 the eastern tropical Pacific Ocean, subject to regula-
 17 tions prescribed under that title by the Secretary
 18 without regard to section 103” before the period;
 19 and

20 (2) by striking the semicolon in the second sen-
 21 tence and all that follows through “practicable”.

22 (b) Section 101(a)(2) (16 U.S.C. 1371(a)(2)) is
 23 amended—

24 (1) by striking subparagraph (B) and inserting
 25 the following:

1 “(B) in the case of yellowfin tuna har-
2 vested with purse seine nets in the eastern trop-
3 ical Pacific Ocean, and products therefrom, to
4 be exported to the United States, shall require
5 that the government of the exporting nation
6 provide documentary evidence that—

7 “(i)(I) the tuna or products therefrom
8 were not banned from importation under
9 this paragraph before the effective date of
10 the International Dolphin Conservation
11 Program Act; or

12 “(II) the tuna or products therefrom
13 were harvested after the effective date of
14 the International Dolphin Conservation
15 Program Act by vessels of a nation which
16 participates in the International Dolphin
17 Conservation Program, and such harvest-
18 ing nation is either a member of the Inter-
19 American Tropical Tuna Commission or
20 has initiated (and within 6 months there-
21 after completed) all steps required of appli-
22 cant nations, in accordance with article V,
23 paragraph 3 of the Convention establishing

the Inter-American Tropical Tuna Commission, to become a member of that organization;

“(ii) such nation is meeting the obligations of the International Dolphin Conservation Program and the obligations of membership in the Inter-American Tropical Tuna Commission, including all financial obligations; and

“(iii) the total dolphin mortality limits, and per stock per year dolphin mortality limits permitted for that nation’s vessels under the International Dolphin Conservation Program do not exceed those levels determined for 1996, or in any year thereafter, consistent with a commitment and objective to progressively reduce dolphin mortality to a level approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality, and requirements of the International Dolphin Conservation Program; and”

(2) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively;

1 (3) by inserting after subparagraph (B) the fol-
2 lowing:

3 “(C) the Secretary shall not accept such
4 documentary evidence if—

5 “(i) the government of the harvesting
6 nation does not provide directly or author-
7 ize the Inter-American Tropical Tuna
8 Commission to release complete and accu-
9 rate information to the Secretary in a
10 timely manner to allow determination of
11 compliance with the International Dolphin
12 Conservation Program; or

13 “(ii) the government of the harvesting
14 nation does not provide directly or author-
15 ize the Inter-American Tropical Tuna
16 Commission to release complete and accu-
17 rate information to the Secretary in a
18 timely manner for the purposes of tracking
19 and verifying compliance with the mini-
20 mum requirements established by the Sec-
21 retary in regulations promulgated under
22 subsection (f) of the Dolphin Protection
23 Consumer Information Act (16 U.S.C.
24 1385(f)); or

1 “(iii) after taking into consideration
 2 this information, findings of the Inter-
 3 American Tropical Tuna Commission, and
 4 any other relevant information, including
 5 information that a nation is consistently
 6 failing to take enforcement actions on vio-
 7 lations which diminish the effectiveness of
 8 the International Dolphin Conservation
 9 Program, the Secretary, in consultation
 10 with the Secretary of State, finds that the
 11 harvesting nation is not in compliance with
 12 the International Dolphin Conservation
 13 Program.”; and

14 (4) by striking “subparagraph (E)” in the mat-
 15 ter after subparagraph (F), as redesignated by para-
 16 graph (2) of this subsection, and inserting “subpara-
 17 graph (F)”.

18 (c) Section 101 (16 U.S.C. 1371) is amended by add-
 19 ing at the end the following new subsection:

20 “(d) ACT NOT TO APPLY TO INCIDENTAL TAKINGS
 21 BY UNITED STATES CITIZENS EMPLOYED ON FOREIGN
 22 VESSELS OUTSIDE THE UNITED STATES EEZ.—The pro-
 23 visions of this Act shall not apply to a citizen of the United
 24 States who incidentally takes any marine mammal during

1 fishing operations outside the United States exclusive eco-
2 nomic zone (as defined in section 3 of the Magnuson-Ste-
3 vens Fishery Conservation and Management Act (16
4 U.S.C. 1802)) when employed on a foreign fishing vessel
5 of a harvesting nation which is in compliance with the
6 International Dolphin Conservation Program.”.

7 (d) Section 104(h) (16 U.S.C. 1374(h)) is amended
8 to read as follows:

9 “(h) GENERAL PERMITS.—

10 “(1) Consistent with the regulations prescribed
11 pursuant to section 103 of this title and to the re-
12 quirements of section 101 of this title, the Secretary
13 may issue an annual permit to a United States
14 purse seine fishing vessel for the taking of such ma-
15 rine mammals, and shall issue regulations to cover
16 the use of any such annual permits.

17 “(2) Such annual permits for the incidental
18 taking of marine mammals in the course of commer-
19 cial purse seine fishing for yellowfin tuna in the
20 eastern tropical Pacific Ocean shall be governed by
21 section 304 of this Act, subject to the regulations
22 issued pursuant to section 302 of this Act.”.

23 (e) Section 108(a)(2) (16 U.S.C. 1378(a)(2)) is
24 amended—

1 (1) by striking “and” at the end of subpara-
2 graph (A);

3 (2) by inserting after subparagraph (B) the fol-
4 lowing:

5 “(C) negotiations to revise the Convention
6 for the Establishment of an Inter-American
7 Tropical Tuna Commission (1 U.S.T. 230;
8 TIAS 2044) which will incorporate—

9 “(i) the conservation and management
10 provisions agreed to by the nations which
11 have signed the Declaration of Panama
12 and in the Straddling Fish Stocks and
13 Highly Migratory Fish Stocks Agreement,
14 as opened for signature on December 4,
15 1995; and

16 “(ii) a revised schedule of annual con-
17 tributions to the expenses of the Inter-
18 American Tropical Tuna Commission that
19 is equitable to participating nations; and

20 “(D) discussions with those countries par-
21 ticipating, or likely to participate, in the Inter-
22 national Dolphin Conservation Program, for the
23 purpose of identifying sources of funds needed

1 for research and other measures promoting ef-
2 fective protection of dolphins, other marine spe-
3 cies, and the marine ecosystem;”.

4 (f) Section 110(a) (16 U.S.C. 1380(a)) is amended—
5 (1) by striking “(1)” in paragraph (1); and
6 (2) by striking paragraph (2).

7 (g) Subsection (d)(1) of the Dolphin Protection
8 Consumer Information Act (16 U.S.C. 1385(d)(1)) is
9 amended to read as follows:

10 “(1) It is a violation of section 5 of the Federal
11 Trade Commission Act for any producer, importer,
12 exporter, distributor, or seller of any tuna product
13 that is exported from or offered for sale in the
14 United States to include on the label of that product
15 the term ‘Dolphin Safe’ or any other term or symbol
16 that falsely claims or suggests that the tuna con-
17 tained in the product was harvested using a method
18 of fishing that is not harmful to dolphins if the
19 product contains—

20 “(A) tuna harvested on the high seas by a
21 vessel engaged in driftnet fishing;

22 “(B) tuna harvested in the eastern tropical
23 Pacific Ocean by a vessel using purse seine nets
24 which do not meet the requirements of being
25 considered dolphin safe under paragraph (2);

1 “(C) tuna harvested outside the eastern
 2 tropical Pacific Ocean by a vessel using purse
 3 seine nets which do not meet the requirements
 4 for being considered dolphin safe under para-
 5 graph (3); or

6 “(D) tuna harvested by a vessel engaged in
 7 any fishery identified by the Secretary pursuant
 8 to paragraph (4) as having a regular and sig-
 9 nificant incidental mortality of marine mam-
 10 mals.”.

11 (h) Subsection (d)(2) of the Dolphin Protection
 12 Consumer Information Act (16 U.S.C. 1385(d)(2)) is
 13 amended to read as follows:

14 “(2) For purposes of paragraph (1)(B), a tuna
 15 product that contains tuna harvested in the eastern
 16 tropical Pacific Ocean by a vessel using purse seine
 17 nets is dolphin safe if—

18 “(A) the vessel is of a type and size that
 19 the Secretary has determined, consistent with
 20 the International Dolphin Conservation Pro-
 21 gram, is not capable of deploying its purse seine
 22 nets on or to encircle dolphins; or

23 “(B)(i) the product is accompanied by a
 24 written statement executed by the captain of
 25 the vessel which harvested the tuna certifying

1 that no dolphins were killed during the sets in
2 which the tuna were caught;

3 “(ii) the product is accompanied by a writ-
4 ten statement executed by—

5 “(I) the Secretary or the Secretary’s
6 designee;

7 “(II) a representative of the Inter-
8 American Tropical Tuna Commission; or

9 “(III) an authorized representative of
10 a participating nation whose national pro-
11 gram meets the requirements of the Inter-
12 national Dolphin Conservation Program,
13 which states that there was an observer ap-
14 proved by the International Dolphin Conserva-
15 tion Program on board the vessel during the en-
16 tire trip and that such observer documented
17 that no dolphins were killed during the sets in
18 which the tuna in the tuna product were
19 caught; and

20 “(iii) the statements referred to in clauses
21 (i) and (ii) are endorsed in writing by each ex-
22 porter, importer, and processor of the product;
23 and

24 “(C) the written statements and endorse-
25 ments referred to in subparagraph (B) comply

1 with regulations promulgated by the Secretary
2 which would provide for the verification of tuna
3 products as dolphin safe.”.

4 (i) Subsection (d) of the Dolphin Protection
5 Consumer Information Act (16 U.S.C. 1385(d)) is amend-
6 ed further by adding the following new paragraphs:

7 “(3) For purposes of paragraph (1)(C), tuna or
8 a tuna product that contains tuna harvested outside
9 the eastern tropical Pacific Ocean by a fishing vessel
10 using purse seine nets is dolphin safe if—

11 “(A) it is accompanied by a written state-
12 ment executed by the captain of the vessel cer-
13 tifying that no purse seine net was intentionally
14 deployed on or to encircle dolphins during the
15 particular voyage on which the tuna was har-
16 vested; or

17 “(B) in any fishing in which the Secretary
18 has determined that a regular and significant
19 association occurs between marine mammals
20 and tuna, it is accompanied by a written state-
21 ment executed by the captain of the vessel and
22 an observer, certifying that no purse seine net
23 was intentionally deployed on or to encircle ma-
24 rine mammals during the particular voyage on
25 which the tuna was harvested.

1 “(4) For purposes of paragraph (1)(D), tuna or
2 a tuna product that contains tuna harvested in a
3 fishery identified by the Secretary as having a regu-
4 lar and significant incidental mortality or serious in-
5 jury of marine mammals is dolphin safe if it is ac-
6 companied by a written statement executed by the
7 captain of the vessel and, where determined to be
8 practicable by the Secretary, an observer participat-
9 ing in a national or international program acceptable
10 to the Secretary certifying that no marine mammals
11 were killed in the course of the fishing operation or
12 operations in which the tuna were caught.

13 “(5) No tuna product may be labeled with any
14 reference to dolphins, porpoises, or marine mam-
15 mals, except as dolphin safe in accordance with this
16 subsection.”.

17 (j) Subsection (f) of the Dolphin Protection
18 Consumer Information Act (16 U.S.C. 1385(f)) is amend-
19 ed to read as follows:

20 “(f) REGULATIONS.—The Secretary, in consultation
21 with the Secretary of the Treasury, shall issue regulations
22 to implement this section not later than 3 months after

1 the date of enactment of the International Dolphin Con-
2 servation Program Act. In the development of these regu-
3 lations, the Secretary shall establish appropriate proce-
4 dures for ensuring the confidentiality of proprietary infor-
5 mation the submission of which is voluntary or mandatory.
6 The regulations shall establish a domestic tracking and
7 verification program that provides for the effective track-
8 ing of tuna labeled under subsection (d), including provi-
9 sions that address each of the following items:

10 “(1) the use of weight calculation for purposes
11 of tracking tuna caught, landed, processed, and ex-
12 ported;

13 “(2) additional measures to enhance current ob-
14 server coverage, including the establishment of cri-
15 teria for training as necessary, and for improving
16 monitoring and reporting capabilities and proce-
17 dures;

18 “(3) the designation of well location, procedures
19 for sealing holds, procedures for monitoring and cer-
20 tifying both above and below deck, or through equal-
21 ly effective methods, the tracking and verification of
22 tuna labeled under subsection (d);

23 “(4) the reporting, receipt, and database stor-
24 age of radio and facsimile transmittals from fishing

1 vessels containing information related to the track-
2 ing and verification of tuna, and the definition of
3 set;

4 “(5) the shore-based verification and tracking
5 throughout the fishing, transshipment, and canning
6 process by means of Inter-American Tropical Tuna
7 Commission trip records or otherwise;

8 “(6) the use of periodic audits and spot checks
9 for caught, landed, and processed tuna products la-
10 beled in accordance with subsection (d); and

11 “(7) the provision of timely access to data re-
12 quired under this subsection by the Secretary from
13 harvesting nations to undertake the actions required
14 in paragraph (6) of this subsection.

15 The Secretary may make such adjustments as may be ap-
16 propriate to the regulations promulgated under this sub-
17 section to implement an international tracking and ver-
18 ification program that meets or exceeds the minimum re-
19 quirements established by the Secretary under this sub-
20 section.”.

21 **SEC. 5. AMENDMENTS TO TITLE III.**

22 (a) The heading of title III is amended to read as
23 follows:

1 “TITLE III—INTERNATIONAL DOLPHIN
2 CONSERVATION PROGRAM”.

3 (b) Section 301 (16 U.S.C. 1411) is amended—

4 (1) by striking paragraph (4) of subsection (a)
5 and inserting the following:

6 “(4) Nations harvesting yellowfin tuna in the
7 eastern tropical Pacific Ocean have demonstrated
8 their willingness to participate in appropriate multi-
9 lateral agreements to reduce dolphin mortality pro-
10 gressively to a level approaching zero through the
11 setting of annual limits, with the goal of eliminating,
12 dolphin mortality in that fishery. Recognition of the
13 International Dolphin Conservation Program will as-
14 sure that the existing trend of reduced dolphin mor-
15 tality continues; that individual stocks of dolphins
16 are adequately protected; and that the goal of elimi-
17 nating all dolphin mortality continues to be a prior-
18 ity.”; and

19 (2) by striking paragraphs (2) and (3) of sub-
20 section (b) and inserting the following:

21 “(2) support the International Dolphin Con-
22 servation Program and efforts within the Program
23 to reduce, with the goal of eliminating, the mortality
24 referred to in paragraph (1);

1 “(3) ensure that the market of the United
2 States does not act as an incentive to the harvest of
3 tuna caught with driftnets or caught by purse seine
4 vessels in the eastern tropical Pacific Ocean not op-
5 erating in compliance with the International Dolphin
6 Conservation Program;”.

7 (c) Section 302 (16 U.S.C. 1412) is amended to read
8 as follows:

9 **“SEC. 302. AUTHORITY OF THE SECRETARY.**

10 “(a) REGULATIONS.—

11 “(1) The Secretary shall issue regulations to
12 implement the International Dolphin Conservation
13 Program.

14 “(2)(A) Not later than 3 months after the ef-
15 fective date of the International Dolphin Conserva-
16 tion Program Act, the Secretary shall issue regula-
17 tions to authorize and govern the taking of marine
18 mammals in the eastern tropical Pacific Ocean, in-
19 cluding any species of marine mammal designated as
20 depleted under this Act but not listed as endangered
21 or threatened under the Endangered Species Act (16
22 U.S.C. 1531 et seq.), by vessels of the United States
23 participating in the International Dolphin Conserva-
24 tion Program.

1 “(B) Regulations issued under this section shall
2 include provisions—

3 “(i) requiring observers on each vessel;

4 “(ii) requiring use of the backdown proce-
5 dure or other procedures equally or more effec-
6 tive in avoiding mortality of marine mammals
7 in fishing operations;

8 “(iii) prohibiting intentional sets on stocks
9 and schools in accordance with the Inter-
10 national Dolphin Conservation Program;

11 “(iv) requiring the use of special equip-
12 ment, including dolphin safety panels in nets,
13 monitoring devices as identified by the Inter-
14 national Dolphin Conservation Program to de-
15 tect unsafe fishing conditions that may cause
16 high incidental dolphin mortality before nets
17 are deployed by a tuna vessel, operable rafts,
18 speedboats with towing bridles, floodlights in
19 operable condition, and diving masks and snor-
20 kels;

21 “(v) ensuring that the backdown procedure
22 during sets of purse seine net on marine mam-
23 mals is completed and rolling of the net to sack
24 up has begun no later than 30 minutes before
25 sundown;

1 “(vi) banning the use of explosive devices
2 in all purse seine operations;

3 “(vii) establishing per vessel maximum an-
4 nual dolphin mortality limits, total dolphin mor-
5 tality limits and per-stock per-year mortality
6 limits in accordance with the International Dol-
7 phin Conservation Program;

8 “(viii) preventing the making of intentional
9 sets on dolphins after reaching either the vessel
10 maximum annual dolphin mortality limits, total
11 dolphin mortality limits, or per-stock per-year
12 mortality limits;

13 “(ix) preventing the fishing on dolphins by
14 a vessel without an assigned vessel dolphin mor-
15 tality limit;

16 “(x) allowing for the authorization and
17 conduct of experimental fishing operations,
18 under such terms and conditions as the Sec-
19 retary may prescribe, for the purpose of testing
20 proposed improvements in fishing techniques
21 and equipment that may reduce or eliminate
22 dolphin mortality or do not require the encircle-
23 ment of dolphins in the course of commercial
24 yellowfin tuna fishing;

1 “(xi) authorizing fishing with the area cov-
2 ered by the International Dolphin Conservation
3 Program by vessels of the United States with-
4 out the use of special equipment or nets if the
5 vessel takes an observer on board and does not
6 intentionally deploy nets on, or encircle, dol-
7 phins, under such terms and conditions as the
8 Secretary may prescribe; and

9 “(xii) containing such other restrictions
10 and requirements as the Secretary determines
11 are necessary to implement the International
12 Dolphin Conservation Program with respect to
13 vessels of the United States.

14 “(C) ADJUSTMENTS TO REQUIREMENTS.—The
15 Secretary may make such adjustments as may be
16 appropriate to requirements of subparagraph (B)
17 that pertain to fishing gear, vessel equipment, and
18 fishing practices to the extent the adjustments are
19 consistent with the International Dolphin Conserva-
20 tion Program.

21 “(b) CONSULTATION.—In developing any regulation
22 under this section, the Secretary shall consult with the
23 Secretary of State, the Marine Mammal Commission and
24 the United States Commissioners to the Inter-American

1 Tropical Tuna Commission appointed under section 3 of
2 the Tuna Conventions Act of 1950 (16 U.S.C. 952).

3 “(c) EMERGENCY REGULATIONS.—

4 “(1) If the Secretary determines, on the basis
5 of the best scientific information available (including
6 that obtained under the International Dolphin Con-
7 servation Program) that the incidental mortality and
8 serious injury of marine mammals authorized under
9 this title is having, or is likely to have, a significant
10 adverse effect on a marine mammal stock or species,
11 the Secretary shall—

12 “(A) notify the Inter-American Tropical
13 Tuna Commission of his or her findings, along
14 with recommendations to the Commission as to
15 actions necessary to reduce incidental mortality
16 and serious injury and mitigate such adverse
17 impact; and

18 “(B) prescribe emergency regulations to
19 reduce incidental mortality and serious injury
20 and mitigate such adverse impact.

1 “(2) Before taking action under subparagraph
2 (A) or (B) of paragraph (1), the Secretary shall con-
3 sult with the Secretary of State, the Marine Mam-
4 mal Commission, and the United States Commis-
5 sioners to the Inter-American Tropical Tuna Com-
6 mission.

7 “(3) Emergency regulations prescribed under
8 this subsection—

9 “(A) shall be published in the Federal
10 Register, together with an explanation thereof;

11 “(B) shall remain in effect for the duration
12 of the applicable fishing year; and

13 “(C) may be terminated by the Secretary
14 at an earlier date by publication in the Federal
15 Register of a notice of termination if the Sec-
16 retary determines that the reasons for the
17 emergency action no longer exist.

18 “(4) If the Secretary finds that the incidental
19 mortality and serious injury of marine mammals in
20 the yellowfin tuna fishery in the eastern tropical Pa-
21 cific Ocean is continuing to have a significant ad-
22 verse impact on a stock or species, the Secretary
23 may extend the emergency regulations for such addi-
24 tional periods as may be necessary.

1 “(d) RESEARCH.—The Secretary shall, in coopera-
2 tion with the nations participating in the International
3 Dolphin Conservation Program and with the Inter-Amer-
4 ican Tropical Tuna Commission, undertake or support ap-
5 propriate scientific research to further the goals of the
6 International Dolphin Conservation Program. Such re-
7 search may include—

8 “(1) devising cost-effective fishing methods and
9 gear so as to reduce, with the goal of eliminating,
10 the incidental mortality and serious injury of marine
11 mammals in connection with commercial purse seine
12 fishing in the eastern tropical Pacific Ocean;

13 “(2) developing cost-effective methods of fishing
14 for mature yellowfin tuna without setting nets on
15 dolphins or other marine mammals;

16 “(3) carrying out stock assessments for those
17 marine mammal species and marine mammal stocks
18 taken in the purse seine fishery for yellowfin tuna in
19 the eastern tropical Pacific Ocean, including species
20 or stocks not within waters under the jurisdiction of
21 the United States;

22 “(4) studying the effect of chase and encircle-
23 ment on the health and biology of dolphin and dol-
24 phin populations incidentally taken in the course of

1 purse seine fishing for yellowfin tuna in the eastern
2 tropical Pacific Ocean; and

3 “(5) determining the extent to which the inci-
4 dental take of nontarget species, including juvenile
5 tuna, occurs in the course of purse seine fishing for
6 yellowfin tuna in the eastern tropical Pacific Ocean,
7 the geographic location of the incidental take, and
8 the impact of that incidental take on tuna stocks,
9 and nontarget species.

10 There are authorized to be appropriated to the Secretary
11 \$1,000,000 to be used by the Secretary, acting through
12 the National Marine Fisheries Service, to carry out para-
13 graph (4). Upon completion of the study required by that
14 paragraph, the Secretary shall submit a report containing
15 the results of the study and any recommendations the Sec-
16 retary may have to offer on the basis of the study to the
17 Committee on Commerce, Science, and Transportation of
18 the Senate and the Committee on Commerce of the House
19 of Representatives, and to the Inter-American Tropical
20 Tuna Commission. The Secretary shall include a descrip-
21 tion of the annual results of research carried out under
22 this subsection in the report required under section 303.”.

23 (d) Section 303 (16 U.S.C. 1413) is hereby repealed.

24 (e) Section 304 (16 U.S.C. 1414) is amended to read
25 as follows:

1 **“SEC. 303. REPORTS BY THE SECRETARY.**

2 “Notwithstanding section 103(f), the Secretary shall
3 submit annual reports to the Congress which include—

4 “(1) results of research conducted pursuant to
5 section 302;

6 “(2) a description of the status and trends of
7 stocks of tuna;

8 “(3) a description of the efforts to assess,
9 avoid, reduce, and minimize the bycatch of juvenile
10 yellowfin tuna and bycatch of nontarget species;

11 “(4) a description of the activities of the Inter-
12 national Dolphin Conservation Program and of the
13 efforts of the United States in support of the Pro-
14 gram’s goals and objectives, including the protection
15 of dolphin populations in the eastern tropical Pacific
16 Ocean, and an assessment of the effectiveness of the
17 Program;

18 “(5) actions taken by the Secretary under sec-
19 tion 101(a)(2)(B) and section 101(d);

20 “(6) copies of any relevant resolutions and deci-
21 sions of the Inter-American Tropical Tuna Commis-
22 sion, and any regulations promulgated by the Sec-
23 retary under this title; and

24 “(7) any other information deemed relevant by
25 the Secretary.”.

26 (f) Section 305 (16 U.S.C. 1415) is hereby repealed.

1 (g) Section 306 (16 U.S.C. 1416) is amended to read
2 as follows:

3 **“SEC. 304. PERMITS.**

4 “(a) IN GENERAL.—

5 “(1) Consistent with the regulations issued pur-
6 suant to section 302, the Secretary shall issue a per-
7 mit to a vessel of the United States authorizing par-
8 ticipation in the International Dolphin Conservation
9 Program and may require a permit for the person
10 actually in charge of and controlling the fishing op-
11 eration of the vessel. The Secretary shall prescribe
12 such procedures as are necessary to carry out this
13 subsection, including requiring the submission of—

14 “(A) the name and official number or
15 other identification of each fishing vessel for
16 which a permit is sought, together with the
17 name and address of the owner thereof; and

18 “(B) the tonnage, hold capacity, speed,
19 processing equipment, and type and quantity of
20 gear, including an inventory of special equip-
21 ment required under section 302, with respect
22 to each vessel.

23 “(2) The Secretary is authorized to charge a
24 fee for granting an authorization and issuing a per-
25 mit under this section. The level of fees charged

1 under this paragraph may not exceed the adminis-
 2 trative cost incurred in granting an authorization
 3 and issuing a permit. Fees collected under this para-
 4 graph shall be available to the Under Secretary of
 5 Commerce for Oceans and Atmosphere for expenses
 6 incurred in granting authorizations and issuing per-
 7 mits under this section.

8 “(3) After the effective date of the Inter-
 9 national Dolphin Conservation Program Act, no ves-
 10 sel of the United States shall operate in the yellow-
 11 fin tuna fishery in the eastern tropical Pacific Ocean
 12 without a valid permit issued under this section.

13 “(b) PERMIT SANCTIONS.—

14 “(1) In any case in which—

15 “(A) a vessel for which a permit has been
 16 issued under this section has been used in the
 17 commission of an act prohibited under section
 18 305;

19 “(B) the owner or operator of any such
 20 vessel or any other person who has applied for
 21 or been issued a permit under this section has
 22 acted in violation of section 305; or

23 “(C) any civil penalty or criminal fine im-
 24 posed on a vessel, owner or operator of a vessel,

1 or other person who has applied for or been is-
2 sued a permit under this section has not been
3 paid or is overdue,

4 the Secretary may—

5 “(i) revoke any permit with respect to
6 such vessel, with or without prejudice to
7 the issuance of subsequent permits;

8 “(ii) suspend such permit for a period
9 of time considered by the Secretary to be
10 appropriate;

11 “(iii) deny such permit; or

12 “(iv) impose additional conditions or
13 restrictions on any permit issued to, or ap-
14 plied for by, any such vessel or person
15 under this section.

16 “(2) In imposing a sanction under this sub-
17 section, the Secretary shall take into account—

18 “(A) the nature, circumstances, extent,
19 and gravity of the prohibited acts for which the
20 sanction is imposed; and

21 “(B) with respect to the violator, the de-
22 gree of culpability, any history of prior offenses,
23 and other such matters as justice requires.

1 “(3) Transfer of ownership of a vessel, by sale
2 or otherwise, shall not extinguish any permit sanc-
3 tion that is in effect or is pending at the time of
4 transfer of ownership. Before executing the transfer
5 of ownership of a vessel, by sale or otherwise, the
6 owner shall disclose in writing to the prospective
7 transferee the existence of any permit sanction that
8 will be in effect or pending with respect to the vessel
9 at the time of transfer.

10 “(4) In the case of any permit that is sus-
11 pended for the failure to pay a civil penalty or crimi-
12 nal fine, the Secretary shall reinstate the permit
13 upon payment of the penalty or fine and interest
14 thereon at the prevailing rate.

15 “(5) No sanctions shall be imposed under this
16 section unless there has been a prior opportunity for
17 a hearing on the facts underlying the violation for
18 which the sanction is imposed, either in conjunction
19 with a civil penalty proceeding under this title or
20 otherwise.”.

21 (h) Section 307 (16 U.S.C. 1417) is hereby redesign-
22 nated as section 305, and amended—

23 (1) by striking paragraphs (1), (2), and (3) of
24 subsection (a) and inserting the following:

1 “(1) for any person to sell, purchase, offer for
2 sale, transport, or ship, in the United States, any
3 tuna or tuna product unless the tuna or tuna prod-
4 uct is either dolphin safe or has been harvested in
5 compliance with the International Dolphin Conserva-
6 tion Program by a country that is a member of the
7 Inter-American Tropical Tuna Commission or has
8 initiated and within 6 months thereafter completed
9 all steps required of applicant nations in accordance
10 with Article V, paragraph 3 of the Convention estab-
11 lishing the Inter-American Tropical Tuna Commis-
12 sion, to become a member of that organization;

13 (B) by striking paragraph (2) and insert-
14 ing in lieu thereof the following:

15 “(2) except as provided for in subsection
16 101(d), for any person or vessel subject to the juris-
17 diction of the United States intentionally to set a
18 purse seine net on or to encircle any marine mam-
19 mal in the course of tuna fishing operations in the
20 eastern tropical Pacific Ocean except in accordance
21 with this title and regulations issued under pursuant
22 to this title; and

23 “(3) for any person to import any yellowfin
24 tuna or yellowfin tuna product or any other fish or

1 fish product in violation of a ban on importation im-
 2 posed under section 101(a)(2);”;

3 (2) by inserting “(a)(5) or” before “(a)(6)” in
 4 subsection (b)(2); and

5 (3) by striking subsection (d).

6 (i) Section 308 (16 U.S.C. 1418) is redesignated as
 7 section 306, and amended by striking “303” and inserting
 8 in lieu thereof “302(d)”.

9 (j) CLERICAL AMENDMENTS.—The table of contents
 10 in the first section of the Marine Mammal Protection Act
 11 of 1972 is amended by striking the items relating to title
 12 III and inserting in lieu thereof the following:

“TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

“Sec. 301. Findings and policy.

“Sec. 302. Authority of the Secretary.

“Sec. 303. Reports by the Secretary.

“Sec. 304. Permits.

“Sec. 305. Prohibitions.

“Sec. 306. Authorization of appropriations.”.

13 **SEC. 6. AMENDMENTS TO THE TUNA CONVENTIONS ACT.**

14 (a) Section 3(c) of the Tuna Conventions Act (16
 15 U.S.C. 952(c)) is amended to read as follows:

16 “(c) at least one shall be either the Administrator,
 17 or an appropriate officer, of the National Marine Fisheries
 18 Service; and”.

19 (b) Section 4 of the Tuna Conventions Act (16 U.S.C.
 20 953) is amended to read as follows:

1 **“SEC. 4. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC**
2 **ADVISORY SUBCOMMITTEE.**

3 “(a) APPOINTMENTS; PUBLIC PARTICIPATION; COM-
4 PENSATION.—The Secretary, in consultation with the
5 United States Commissioners, shall—

6 “(1) appoint a General Advisory Committee
7 which shall be composed of not less than 5 nor more
8 than 15 persons with balanced representation from
9 the various groups participating in the fisheries in-
10 cluded under the conventions, and from nongovern-
11 mental conservation organizations;

12 “(2) appoint a Scientific Advisory Subcommit-
13 tee which shall be composed of not less than 5 nor
14 more than 15 qualified scientists with balanced rep-
15 resentation from the public and private sectors, in-
16 cluding nongovernmental conservation organizations;

17 “(3) establish procedures to provide for appro-
18 priate public participation and public meetings and
19 to provide for the confidentiality of confidential busi-
20 ness data; and

21 “(4) fix the terms of office of the members of
22 the General Advisory Committee and Scientific Advi-
23 sory Subcommittee, who shall receive no compensa-
24 tion for their services as such members.

25 “(b) FUNCTIONS.—

1 “(1) GENERAL ADVISORY COMMITTEE.—The
 2 General Advisory Committee shall be invited to have
 3 representatives attend all nonexecutive meetings of
 4 the United States sections and shall be given full op-
 5 portunity to examine and to be heard on all pro-
 6 posed programs of investigations, reports, rec-
 7 ommendations, and regulations of the Commission.
 8 The General Advisory Committee may attend all
 9 meetings of the international commissions to which
 10 they are invited by such commissions.

11 “(2) SCIENTIFIC ADVISORY SUBCOMMITTEE.—

12 “(A) ADVICE.—The Scientific Advisory
 13 Subcommittee shall advise the General Advisory
 14 Committee and the Commissioners on matters
 15 including—

16 “(i) the conservation of ecosystems;

17 “(ii) the sustainable uses of living ma-
 18 rine resources related to the tuna fishery
 19 in the eastern Pacific Ocean; and

20 “(iii) the long-term conservation and
 21 management of stocks of living marine re-
 22 sources in the eastern tropical Pacific
 23 Ocean.

24 “(B) OTHER FUNCTIONS AND ASSIST-
 25 ANCE.—The Scientific Advisory Subcommittee

1 shall, as requested by the General Advisory
2 Committee, the United States Commissioners,
3 or the Secretary, perform functions and provide
4 assistance required by formal agreements en-
5 tered into by the United States for this fishery,
6 including the International Dolphin Conserva-
7 tion Program. These functions may include—

8 “(i) the review of data from the Pro-
9 gram, including data received from the
10 Inter-American Tropical Tuna Commis-
11 sion;

12 “(ii) recommendations on research
13 needs, including ecosystems, fishing prac-
14 tices, and gear technology research, includ-
15 ing the development and use of selective,
16 environmentally safe and cost-effective
17 fishing gear, and on the coordination and
18 facilitation of such research;

19 “(iii) recommendations concerning sci-
20 entific reviews and assessments required
21 under the Program and engaging, as ap-
22 propriate, in such reviews and assessments;

23 “(iv) consulting with other experts as
24 needed; and

1 “(v) recommending measures to as-
 2 sure the regular and timely full exchange
 3 of data among the parties to the Program
 4 and each nation’s National Scientific Advi-
 5 sory Committee (or its equivalent).

6 “(3) ATTENDANCE AT MEETINGS.—The Sci-
 7 entific Advisory Subcommittee shall be invited to
 8 have representatives attend all nonexecutive meet-
 9 ings of the United States sections and the General
 10 Advisory Subcommittee and shall be given full op-
 11 portunity to examine and to be heard on all pro-
 12 posed programs of scientific investigation, scientific
 13 reports, and scientific recommendations of the com-
 14 mission. Representatives of the Scientific Advisory
 15 Subcommittee may attend meetings of the Inter-
 16 American Tropical Tuna Commission in accordance
 17 with the rules of such Commission.”.

18 **SEC. 7. EFFECTIVE DATE.**

19 Sections 3 through 6 of this Act shall become effec-
 20 tive upon certification by the Secretary of State to Con-
 21 gress that a binding resolution of the Inter-American
 22 Tropical Tuna Commission or other legally binding instru-
 23 ment establishing the International Dolphin Conservation
 24 Program has been adopted and is in effect.

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